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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,838	09/18/2001	Brad A. Armstrong	19.1	1288

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EXAMINER

EASTHOM, KARL D

ART UNIT PAPER NUMBER

2832

DATE MAILED: 07/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/955,838	Applicant(s) Armstrong
Examiner Karl Easthom	Art Unit 2832

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on May 16, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4) Claim(s) 1-24 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) Other: _____

1. The terminal disclaimer filed on 5/16/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,351,205 has been reviewed and is accepted. The terminal disclaimer has been recorded.
2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-5, 7-9, 11, 13-15, 17, 20-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5999084, Although the conflicting claims are not identical, they are not patentably distinct from each other because :

It appears that certain elements or functional language such as "further positioned for receiving force" is missing from the instant claims 1-3, but it would have been obvious to include or not to include such language since the pressure sensitive material as claimed in '084 must receive such force or it would not create an analog sensor as claimed. Claims 7-8 of the instant claims are obvious since claim 8 of '884 recites pressure sensitive analog variable -conductance material, while claim 8 recites variable in terms of resistivity, the two terms being simply synonyms at best. Claim 7 of the instant claim is a broader recitation which would have been obvious to write as such in order to capture more subject matter as compared to that of '084. The remaining claims appear to be minor variations of claim 7, 10 or 11 of '084 amounting to no more than either rewording or making the claims a little broader. Such modifications would have been obvious in order to eliminate unnecessary parts and their function, or to simply broaden or alter the scope of the claim.

4. Claims 6, 10, 12, 16, 19, and 22-24 are rejected under the judicially created doctrine of double patenting over claims 1-11 of U. S. Patent No. 5,9990841 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Applicant fails to claim the dome cap of '084 is metal in claims thereat. However, that cap is disclosed as metal 16 in '084 where it is hatched as such in Fig. 12.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application

which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968).

See also MPEP § 804.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Furukawa (JP5-87760)(supplied by applicant). Furukawa discloses the claimed invention at Fig. 2 where the tactile action is due to the restoring and it is a threshold at either ends or anywhere in the middle, and where 30, and 33 provides the analog sensor that is pressure-sensitive.

7. Assuming terminal disclaimer IS provided, claims 1-16 would be allowed, while claims 18-19 and 21-24 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Primarily, the snap through device would not have been obvious with the analog structure recited, since the dome cap of Furakawa is insulating. In agreement with applicant's arguments, the cap of Furakawa is not a snap-through device. It is also noted that the device of Kambic (IBMTDB) and Murata (GB 2113920) are not analog sensors or devices because the devices are on/off switches, while the analog structures, devices or sensors of the instant claims are analog in the sense that a continuum of states is sensed. For a further discussion, see Mitchell where Fig. 7 disclose curves 29' and 29 utilizing on/off types of material due to the avalanche effect, while curves 25-29 disclose analog types of materials. It would not have been obvious to employ the latter type of material with the snap-

through type of device, since there is no suggestion for the combination. That is, it would appear that using a snap type device would interfere with smooth analog type sensing, or at the least, there is no reason or suggestion to combine the two types of action. While applicant admits at page 2 of his application a common prior art switch has a metal dome-cap, there is no suggestion to combine that with an analog device such as that of Furukawa for reasons noted. Parsons does not disclose a "snap" type of device.

8. NOTE: The information disclosure statement filed fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. The item noted as QUESTAL ORBIT '1 2!vcQWEB is not in proper format. All pages must be described, such as patent abstract, with title, publication dates, patent numbers, etc. or other information to properly keep record of what is filed. The items have been placed in the application file, but the information referred to therein has not been considered.

9. Applicant's arguments filed 5/16/02 have been fully considered but they are persuasive only in part, as indicated above. As to the terminal disclaimers, only one - the new one for US 6,351,205, were filed in this application. That is, it appears the terminal disclaimer was filed in the other applications. Thus, for example, this application must disclaim any portion that extends beyond the term of the other applications. Applicant must file the remaining terminal disclaimer in this application - the same way as he filed the just noted one. As to the argument that there is no snap-through device disclosed or suggested in Furukawa, where the term implies a "snap" occurs, applicant argument is accepted, where there is no disclosure of such a snap. However, as

to claims 17 and 20, no snap type of device is claimed. A threshold could be the bottom of the travel, for example, and this would be discernable and tactile - felt by the finger.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl Easthom whose telephone number is 703-308-3306. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad, can be reached on (703) 308-7619. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.



KARL D. EASTHOM
PRIMARY EXAMINER